

against the party against whom the order issued.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 60 FR 14525, Mar. 17, 1995]

**§ 1.641 Unpatentability discovered by administrative patent judge.**

(a) During the pendency of an interference, if the administrative patent judge becomes aware of a reason why a claim designated to correspond to a count may not be patentable, the administrative patent judge may enter an order notifying the parties of the reason and set a time within which each party may present its views, including any argument and any supporting evidence, and, in the case of the party whose claim may be unpatentable, any appropriate preliminary motions under §§ 1.633 (c), (d) and (h).

(b) If a party timely files a preliminary motion in response to the order of the administrative patent judge, any opponent may file an opposition (§ 1.638(a)). If an opponent files an opposition, the party may reply (§ 1.638(b)).

(c) After considering any timely filed views, including any timely filed preliminary motions under § 1.633, oppositions and replies, the administrative patent judge shall decide how the interference shall proceed.

[60 FR 14526, Mar. 17, 1995]

**§ 1.642 Addition of application or patent to interference.**

During the pendency of an interference, if the administrative patent judge becomes aware of an application or a patent not involved in the interference which claims the same patentable invention as a count in the interference, the administrative patent judge may add the application or patent to the interference on such terms as may be fair to all parties.

[60 FR 14526, Mar. 17, 1995]

**§ 1.643 Prosecution of interference by assignee.**

(a) An assignee of record in the Patent and Trademark Office of the entire interest in an application or patent involved in an interference is entitled to conduct prosecution of the interference to the exclusion of the inventor.

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show the inability or refusal of the inventor to prosecute the interference or other cause why it is in the interest of justice to permit the assignee of a part interest to prosecute the interference. The administrative patent judge may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14527, Mar. 17, 1995]

**§ 1.644 Petitions in interferences.**

(a) There is no appeal to the Commissioner in an interference from a decision of an administrative patent judge or the Board. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an administrative patent judge or the Board and the administrative patent judge or the Board shall be of the opinion that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference;

(2) The petition seeks to invoke the supervisory authority of the Commissioner and does not relate to the merits of priority of invention or patentability or the admissibility of evidence under the Federal Rules of Evidence; or

(3) The petition seeks relief under § 1.183.

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the administrative patent judge or the Board may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to the party's brief for final hearing (see § 1.656). Any petition under paragraph (a)(3) of this section shall be timely if it is filed simultaneously with a proper motion under § 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. Any opposition to a petition